

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

PHILLIPS MEDICAL SYSTEMS

EMPLOYER

and

Case No. 2-RC-22753

**LOCAL 3, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO**

PETITIONER

DECISION AND DIRECTION OF ELECTION

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of all service employees employed in the Employer's Philadelphia/South Jersey region. A hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2. At the hearing in this matter, the issues raised included the scope and composition of an appropriate unit. On the record as a whole, I find that the Employer has failed to rebut the single-facility presumption and that a unit consisting of all field service engineers in the Employer's Philadelphia/South Jersey region constitutes a unit appropriate for the purposes of collective bargaining. I have, accordingly, directed an election in such a unit.

Upon the entire record¹ in this proceeding, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and

hereby are affirmed.²

2. The record reflects, and I find, that Phillips Medical Systems, (the Employer) is a domestic corporation with an office and principal place of business located at 100 Summit Lake Drive, Valhalla, New York, where it is engaged in the business of supplying, servicing and maintaining diagnostic imaging and patient monitoring equipment, as well as networking and associated services to the health care industry. The record establishes that annually, in the course and conduct of its operations, the Employer generates gross revenues in excess of \$1,000,000 dollars and sells and ships from its New York facility supplies and materials valued in excess of \$50,000 directly to various other enterprises which are located outside the State of New York. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Local 3, International Brotherhood of Electrical Workers AFL-CIO (the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. The petition, as amended at hearing, seeks an election in a unit of all full-time and regular part-time service employees employed by the Employer in its Philadelphia/South Jersey region, excluding all other employees and guards and supervisors as defined in the Act. The Employer contends that the petitioned-for unit is not an appropriate one and urges that the only appropriate unit consists of all service employees in three job classifications employed within the Employer's East Zone. There

¹ Briefs have been filed by the Petitioner and the Employer and have been duly considered.

² I hereby affirm the Hearing Officer's denial of the Employer's motion to adjourn the hearing and resume it at a location within the jurisdiction of Region 4. Such a matter is an administrative determination, not subject to litigation by the parties.

are between 240 and 260 employees in the unit proposed by the Employer. The Petitioner, which did not initially note the distinction among the three classifications of service employees, now seeks only those employees designated as Field Service Engineers. There are approximately 29 such employees in the petitioned-for unit. At the hearing the Petitioner stated that it would be willing to amend the petition to seek an election in a unit comprised of Field Service Engineers employed in the Employer's Philadelphia/South Jersey and Eastern Pennsylvania regions if the Employer would agree to an election in this unit. No such agreement has been reached. The Employer, in its brief, urges in the alternative that in the event the Board concludes that its proposed zone-wide unit is not an appropriate one, an appropriate unit would consist of the Employer's Philadelphia/South Jersey, Eastern Pennsylvania and Capital regions, which would contain approximately 100 employees. Finally, the Petitioner has stated that, while reserving its right to seek appeal of my determinations herein, it would proceed to an election in any unit found to be appropriate herein.

The witnesses appearing at the hearing for the Employer were Charles Kreidinger and Brian Fink. Kreidinger served as the Vice-President for Service of the East Zone from February 2002 through June 2003. He is currently the Regional Service Manager for the Eastern Pennsylvania region. Fink is the Human Resources Representative assigned to the East Zone. The witnesses testifying for the Petitioner were Anthony Sangimono and Georg Schmidt. Sangimono is an employee of the Employer assigned to its Long Island region, and also serves as shop steward for certain of the Employer's already-unionized employees, as will be discussed below. Schmidt is a service engineer assigned to the Philadelphia/South Jersey region.

Overview of the Employer's Operations

The Employer supplies diagnostic imaging and patient monitoring equipment to the health care industry. Since 1998, the Employer has specialized in ultrasound and magnetic resonance equipment. In 2000, the Employer acquired ADAC Laboratories ("ADAC") which added to its product line in the field of nuclear technology as applied in medical diagnostic imaging. Additionally, in 2001, the Employer acquired Marconi Medical Systems (Marconi), which brought increased technology in the areas of computerized tomography (CT), magnetic resonance imaging (MRI) and Nuclear Gamma Camera systems.

The Employer conducts its operations internationally and throughout the United States of America and Canada. Its national headquarters are located in Bothell, Washington. Territories within the United States are subdivided into five "zones." The "East Zone," which the Employer urges to be the appropriate unit, runs from Fort Kent, Maine through and including the Virginia suburbs of Washington, D.C., and has its headquarters at the Valhalla, New York location referred to above. The Zone Vice-President for Service operates out of this location.

According to the Employer's job description, the Zone Vice-President of Service

[p]rovides leadership to ensure that the corporate financial and organizational goals for service are achieved. Manages the zone service business with full P&L responsibility. Provides leadership, coaching and direction for the entire zone service department. Establishes a cohesive working relationship between sales, service and operations that, through teamwork and common goals, enables each department to achieve their objectives in the marketplace.

Also stationed at the Zone office in Valhalla are two Human Resources representatives; the Human Resources Manager and Human Resources Representative. As discussed below, these managers, along with the Zone Vice-President and an administrative staff, are responsible for various personnel matters regarding those employees employed within the East Zone. Other functions that are

centralized by zone include sales, accounts receivable and finance. Support staff, that is located in the Valhalla office, offers support across the East Zone. In addition, certain technical specialists, not included within the categories of employees at issue here, report to Kathy Alvarez, the Director of Service Operations, whose responsibilities cover the entire East Zone.

In addition to the Zone offices, the Employer operates “call centers.” The call center for the East Zone is located in Atlanta, Georgia. These call centers maintain computer and telecommunications equipment and data bases which provide information that facilitates the dispatching of assigned personnel to the appropriate location where service is required. Thus, when a customer calls in for assistance, the call center contains the information necessary to identify the client, its location and the equipment’s history. As discussed in further detail below, each piece of equipment serviced by the Employer is assigned a primary and secondary engineer. These assignments are based primarily on expertise and geographical location. The Employer’s operations are conducted around the clock, on all days of the year.

Localized Operations

Each of the Employer’s zones, including the East Zone, is broken down into regions for administrative processing, customer relations and cost accounting purposes. Each region is considered a separate cost center and has its own budget allocations for items such as travel expenses, overtime payments and employee training. In the East Zone there are twelve regions.³ These regions have contiguous borders. The three

³ These are: Northern New England, Boston/Rhode Island, Connecticut, Upstate New York, Long Island, Manhattan, Northern New Jersey/New York, Central New Jersey, Western Pennsylvania, Eastern Pennsylvania and Philadelphia./South Jersey and Capital regions. The State of Delaware was traditionally considered part of the Capital region but is now considered part of the Philadelphia/South Jersey region.

regions which border the petitioned-for region are the Capital, Eastern Pennsylvania and North New Jersey/New York regions.⁴

Each region is under the direction of the Regional Service Manager (RSM), who reports directly to the Vice President for Service. Each RSM manages the accounts of those customers located within the region, making sure that the equipment is functioning, the appropriate paperwork is processed, costs appropriately allocated, and for customer billing. RSM's are responsible for identifying potential problems in terms of customer satisfaction, such as the quality of technician work and the timeliness of response to customer calls. In this regard, RSM's have first-line responsibility in terms of recommending hiring of new employees and employee discipline. These issues will be discussed in further detail below. In addition, RSM's have the responsibility for the deployment and assignment of field service engineers. This entails assigning particular equipment to service engineers within their jurisdictions. The criteria used by the RSM include the availability of resources, the training of the engineer, the nature of the equipment, the size, import and requirements of the customer and the balancing of work assignments.

Employee Classifications and Duties

Service engineers are grouped into three categories: field service engineers (FSE's), bio-medical technicians (BMT's) and site operations specialists.

Field Service Engineers

FSE's provides primary installation of equipment and is responsible for maintenance and repair services directly to the Employer's customers. FSE's do not report on a daily basis to a home office; rather, they work from their homes and report directly to those customer sites to which they have been assigned for the day. FSE's

⁴ As discussed below, the North New Jersey/New York region is one of five where employees are already represented by the Petitioner.

are expected to travel from between one to four hours per day. Administrative work is done either on site, or out of the employee's home. FSE's are assigned to a particular region. Accordingly, they file expense reports, time sheets and other paperwork within that region.

The Employer requires that FSE's have, at a minimum, a two-year technical or educational degree. However, some FSE's may have advanced degrees in electrical engineering. FSE's are grouped for these purposes into four levels, one through four, with increasing levels of education and technical expertise. Thus, FSE's Level One are in entry level positions for technical school graduates, while FSE's Level Three may be required to handle both primary site responsibilities as well as so-called "luminary accounts" – those major accounts which are used as demonstrations for other potential customers. FSE's Level Four employee have sufficient expertise in a particular product line so that they may be called for assistance at other locations in a particular zone when a primary service team is unable to solve a particular technical problem. The record fails to reflect whether this position is currently filled. Nor is there evidence in the record regarding the frequency with which any such "zone-wide" assignments might have or have taken place.

Given the recent consolidation of the Employer's operations with Marconi and ADAC, FSE's may have technical expertise in particular specialized areas, depending on their company of origin and the type of equipment which was sold and serviced by that company. Thus, according to the Employer, a FSE proficient in installing or repairing certain equipment may have his services required out of his particular region either due to a particular manpower shortage or lack of expertise in a specific area. Other than the evidence regarding particular assignments made to an FSE named Georg Schmidt, which is discussed below, no specific examples of when this has occurred, however, were adduced in the record.

Bio-Medical Technicians

BMT's perform services analogous to those performed by FSE's. However, they are assigned to a particular customer at a specific location. They perform preventive maintenance on equipment and act as on-site technical resources for customers. In addition to maintaining the Employer's equipment on site, BMT's may also service equipment purchased from another vendor. Such a service contract is termed a "multi-vendor account." BMT's are grouped into four levels based upon training and expertise. The levels are analogous to comparable FSE levels.

BMT's do not come under the supervision of the RSM. Rather, they are grouped into multi-vendor regions, which typically are comprised of several adjoining regions. For example, the Mid-Atlantic multi-vendor region encompasses the Philadelphia/South Jersey, Eastern Pennsylvania and Capital regions. This multi-vendor region is under the supervision of Multi-Vendor Regional Service Manager David Benniger.⁵

As Kreidinger testified, a large multi-vendor site may be serviced by a combination of FSE's, BMT's as well as FSE's who are called in to trouble-shoot a particular problem. As such, there is coordination that must occur between field and site employees, as well as their respective managers, in terms of work assignments, cost allocation and customer satisfaction issues. Again, other than the general testimony provided by Kreidinger, no specific examples of where or when this has occurred were adduced. The record does reflect, however, that there are two multi-vendor sites assigned to the Mid-Atlantic multi-vendor region, within the geographic area encompassing the Philadelphia/South Jersey region: Bay State Medical Center and the Medical Center of Princeton. Although Human Resources Representative Fink testified that he did not think that any of the employees in the petitioned-for unit worked at either

⁵ When applicable, both the RSM's and the multi-vendor regional service managers will be referred to collectively as "service managers."

of these locations, the record does establish that the secondary engineer assigned to the Princeton site is a FSE from the Philadelphia/South Jersey region. The record fails to reflect, however, the frequency with which this individual is called to work in this location, or whether, in fact, he ever has.

Site Operation Specialist

The Site Operations Specialist is, in essence, a senior BMT assigned to a particular multi-vendor location. The employee in this classification coordinates the assignments of other personnel, performs service work and is responsible for addressing administrative and operational matters with customer representatives. The site operations specialist may also participate in interviews of potential employees. There is currently one Site Operations Specialist in the East Zone, who is assigned to the Mid-Atlantic Multi-Vendor region. The site location to which he is assigned falls within the geographic scope of the Philadelphia/South Jersey region.

I.B.E.W.- Represented Employees

Certain employees of the Employer in the East Zone are currently represented by Petitioner. These are employees of either Philips or Marconi who were previously represented prior to the merger of the companies. According to the Employer's organizational chart, these include service employees located in five contiguous regions located in and around the New York metropolitan area: Northern New Jersey/New York, South Manhattan, North Manhattan, Connecticut and Long Island. There is currently a collective-bargaining agreement in effect covering service employees who perform functions analogous to those performed by FSE's.⁶ These regions additionally constitute a separate multi-vendor region under the direction of John Ferraro. However, the bio-medical technicians under his supervision are excluded from coverage under the agreement. This is reflected in a letter of understanding executed by the parties.

Kreidinger, who was not a party to negotiations, could not explain how the parties reached this agreement. Shop Steward Sangimino, who works in the Long Island region, testified that the Union wanted to add this work to the covered classifications, but that during contract negotiations, which took place in September and October of 2002, the Employer took the position that work on bio-medical engineering equipment was not part of the scope of the work performed by the service engineers covered by the agreement. The Employer's union-represented employees are not assigned to work with non-represented employees. And, there is no specific evidence regarding inter-regional assignments in this group.

Terms and Conditions of Employment

As noted above, the Employer operates nationally. Many of its employment policies and practices are developed at that level and implemented locally. For example, all FSE's enjoy the same compensation package. Individual wage rates for each particular engineer may vary, however, due to geographic location and job grades and levels. Within a particular zone, there are adjustments to reflect those metropolitan areas with higher costs of living. Within the East Zone there are four geographic differentials of approximately five percent. Each region within the East Zone may have employees compensated at one or all of these differentials depending on where a particular FSE lives. Service engineers may be paid either on a weekly or bi-weekly basis, depending on which company they previously worked for. It appears from the record that BMT's are not compensated at the same level as FSE's, but it is not clear how much less their salary range is. On cross-examination, Human Resources Representative Fink was asked how much less the BMT wage range was than that for FSE's. He stated that he did not know.

⁶ Employee job titles under the collective bargaining agreement vary from those employed herein.

According to Kreidinger, in the spring of each year, merit salary increases are processed. As he testified, headquarters will provide the zone vice-president with a particular payroll budget. The percentage of that budget which will go to merit increases is determined centrally, in corporate headquarters, by the senior vice-president of customer services. Simultaneously, performance reviews are issued by the service managers, and employees receive a performance grade from one to five, with five being superior. Kreidinger testified that when he was Zone Vice President he created a matrix dependent on two factors: the performance grade that the individual received on the service manager's evaluation and the employee's depth in grade (relationship to other employees). Kreidinger testified that he then reviewed employee performance evaluations and quizzed the service managers on a number of them. On one occasion he caused the rating of one employee to be adjusted upward because of his personal knowledge of that employee's work skills and job performance. After this review, merit increases were awarded to employees based upon the application of the matrix he created. Kreidinger additionally testified that a zone vice-president must approve all adjustments to compensation and promotions.

The parent company of the Employer, Philips Electronics of North America, maintains a group benefits program for all employees at all Phillips divisions within the United States. The standard benefits that make up this group benefits program are referred to as the Philips "Signature Benefits."⁷ In addition, each Philips division may have selections that are specific to that division or geographic location.⁸

Employees of the Employer, wherever located, generally work from 8:00 a.m. to 5:00 p.m. However, there are certain locations where employees work other hours based

⁷ These benefits include medical, dental and vision plans, flexible spending accounts, short- and long-term disability coverage, life insurance, personal time off, 401(k) plans, pension plans, scholarship programs, credit union, matching gift programs, and survivor benefits among others.

on need. Overtime is under the immediate control of the RSM. There is a budget that is provided to a RSM for overtime expenditures. If the RSM stays within that budget, his decisions will not be subject to scrutiny. In the event he exceeds the budget, the zone vice-president may become involved in planning to meet customer expectations without incurring the extra cost.

RSM's may not assign employees to work in a different region without the concurrence of the corresponding RSM. Likewise, if RSM's require assistance from another region, they do not have the authority to direct employees to perform such work without the assent of the employees' service managers. The record establishes that when an employee performs work outside of his or her assigned region, the costs of labor and any equipment are allocated to the region where the employee performs those services.

Hiring of Employees

The hiring process is initiated when an RSM requests a personnel requisition. This is in response to a perceived need due to a loss of personnel or a lack of resources to service all the equipment within the region. The requisition goes from the RSM to the zone human resources manager and the zone vice-president of service. The approval of both managers is required before the personnel requisition is issued. Approval is also sought from the corporate office, in particular from the Senior Vice President of Service. The request for a personnel requisition can be denied by anyone in the chain. Kreidinger testified that when he was Zone Vice-President for Service he denied such a request due to the fact that a way was found to fill the perceived need without hiring additional personnel; he also testified that on occasion he has required a RSM to submit supplementary justification to support a request for additional personnel.

⁸ For example, the company offers employees a choice of two national medical plans. In addition, certain employees have the option of choosing a HMO plan based on where they live.

After the request for approval is obtained, recruitment can happen in one of several ways. There is a central recruiting function within the corporate Human Resources department, employees who have sent in resumes which are kept on file may be contacted, or candidates for employment may be recruited because they are known to the Employer due to their work for a competitor or a hospital whose equipment is serviced by the Employer.

If a candidate is deemed qualified, the interview process is begun. Initial interviews for FSE positions take place in the field, in the geographic area of the region. Typically junior level candidates, such as for an FSE-1 position, are interviewed by the RSM and a small number of other service engineers. There is a specific interview format which is followed and notes are taken. The candidate is then referred to the zone office where the documentation of the interview is reviewed by human resources and the zone vice-president, who may choose to approve or deny the hire. The record is silent, however, on whether there is any further review if the RSM forwards a negative recommendation. If the position being filled is a senior level position, or one for a luminary account, the zone vice-president may choose to become directly involved in the interview process. Those interviews will take place in the zone office. As Kreidinger testified, the more senior the employee is, the more likely it is that someone from the zone office will be involved because those positions are deemed leadership positions, both from a technical and administrative point of view. In any situation, however, the approval of both the zone vice-president and human resources personnel before any actual hiring is effectuated. Kreidinger testified that on one occasion he was involved in a hiring decision for a FSE-4 position. As Zone Vice-President he declined to hire the candidate. The rationale was that, during the interview process, the determination was made that the need for this additional personnel no longer existed. In one other instance, the Employer was considering hiring an employee who worked for a competitor. It was

determined, however, that he could not fulfill his obligations to the company without violating his proprietary agreement with his employer. Thus, Kreidinger declined to approve the hiring of this individual.

Employee Discipline

The Employer operates a progressive discipline system. Initially, disciplinary issues are addressed at the service manager's level. If such steps are not effective, then written documentation is presented to the employee. In such an event, both the zone vice-president and the human resources manager in the zone office will review and approve the language of the written warning. In the event a disciplinary action proceeds further than a written warning, the zone vice-president and human resources manager must approve such action. According to Kreidinger, in the event of a proposed suspension, the zone vice-president may conduct an independent investigation or delegate such a responsibility to others, but he would conduct a review of the materials prior to authorizing such action. This review would be conducted in conjunction with the human resources department. Proposed terminations are reviewed by the Philips legal department as well. No specific examples of suspensions or terminations or the roles played by RSM's, zone vice-presidents or human resources personnel were adduced in the record.

During the period when Kreidinger was Zone Vice-President for Service, he issued a memorandum designed to provide service managers with "some guidance on discipline." This memorandum was applicable to all employees within the East Zone. The memorandum requires that any document to be provided to an employee that could result in formal disciplinary action such as suspension or discharge must be reviewed by Kreidinger and Human Resources prior to issuance. Such documents include formal letters of warning, adverse performance reviews (where a performance rating is equal to one) and performance improvement plans. The memorandum outlines procedures the

service managers are to take with respect to each step of the disciplinary process, and states, "as managers we are each responsible for ensuring that our employees are meeting the requirements of their jobs. . . you are responsible for ensuring that your employees meet the basic requirements of their positions." According to Kreidinger's instructions, service managers are expected to keep records of and document discussions with employees regarding infractions or perceived inadequacies in an employee's work performance, prepare written warnings and (after approval) present such warnings in a face-to-face discussion with the employee involved. Kreidinger testified that during the time he was zone vice president he did not have an occasion where a service manager requested a suspension; nor has he recommended or requested approval of the suspension of any employee since he assumed his duties as regional service manager. With respect to terminations, Kreidinger testified that he did not decline to approve any termination recommended by a service manager; however, there is no evidence as to whether any such requests were forwarded to him. As regional service manager, he has recommended and requested approval of one termination, and such approval has been granted.

The Employer occasionally issues performance improvement plans to employees. This is a formal document, which identifies specific deficiencies in performance for a service engineer and establishes a plan whereby the employee is to correct such deficiencies. Work improvement plans generally are based upon a format which is developed in company headquarters, but for the specifics of such plans are actually written by the service managers, along with the assistance of the human resources department, and the document presented is signed and delivered to the employee by the service manager. Kreidinger testified that before such a performance improvement plan is delivered it is also reviewed by the zone vice-president. He further testified that, while serving in this capacity, he made modifications to such plans on at

least two occasions because, while the incidents necessitating such action were documented, the written plan was not in an appropriate format. Thus, Kreidinger felt it necessary to rewrite the plan in a format that would pass muster with the legal department. No examples of such performance improvement plans were entered into evidence.

Employee Interaction and Interchange

As noted above, Kreidinger testified generally that FSE's are assigned to work in adjoining regions based upon customer need and employee technical expertise, and that in the course of doing so they frequently worked along side with or had occasion to interact with FSE's and BMT's from other regions. He stated that for purposes of assigning service engineers either on a primary or secondary or even ad hoc basis, the borders among regions were "porous" and "almost advisory." He further testified that certain rural areas of southern Delaware, technically within the Philadelphia/South Jersey region, are geographically closer to the Capital region and may be serviced by engineers assigned to that Region. Kreidinger stated that during the monthly product line meetings he conduct with the service engineers from his region, he hears about specific instances where there has been contact with service engineers from the Philadelphia/South Jersey region on service issues and specific customers that are close to the border of the two regions.

On cross-examination, Kreidinger was asked specifically about whether he had personal knowledge of whether certain named employees, identified as FSE's from the Philadelphia/South Jersey region, had either worked in another region or, conversely, had worked in their home region with employees from another region. Out of 24 employees identified as being assigned to the petitioned-for unit, Kreidinger identified 6 employees who had worked on unspecified occasions at locations in the East Pennsylvania region. In addition, one employee worked within the Philadelphia/South

Jersey region with employees assigned to the East Pennsylvania region. One senior X-ray service engineer had assignments in both the East Pennsylvania and Capital regions, and an employee initially stationed and working in New Hampshire had worked for an extended period in the Philadelphia/South Jersey region and had recently transferred there.⁹ From memory, Kreidinger was unable to provide any specific information regarding either the nature or frequency of such assignments. With respect to 16 named individuals, Kreidinger was without knowledge of whether they had worked in other regions or along with employees from other regions within their home region.

Kreidinger was later recalled to the stand, and the Employer questioned him regarding certain exhibits that it had prepared for purposes of the instant case, which as the Employer asserts, demonstrates the cross-utilization of FSE's between zones. In particular, the Employer referred to a 19-page exhibit, with approximately 40 entries per page, compiled from the Marconi database,¹⁰ which is a report listing equipment sites in the Philadelphia/South Jersey, Capital and Eastern Pennsylvania regions,¹¹ and the names of those primary and secondary service engineers assigned to them. In going through this document, Kreidinger identified a number of sites where there appear to be cross-utilization of FSE's. Specifically, Kreidinger identified 12 sites, located in the Philadelphia/South Jersey Region where 8 assignments (either as primary or secondary engineer) were made to employees from the Eastern Pennsylvania region, and where 2 such assignments were made to employees from the Capital region. Additionally, there were six locations (two of which had multiple entries) in the Eastern Pennsylvania Region where assignments were made to FSE's originating from the Philadelphia/South

⁹ In his testimony, Kresinger alluded to two other instances where employees had transferred. One such employee transferred from Michigan to New Hampshire and another from Cleveland to New Hampshire.

¹⁰ According to Human Resources Representative Fink, the company has not yet integrated the databases from the companies it acquired into one comprehensive database; thus, the exhibit

Jersey region. One site in the Capital Region had a FSE assigned to it from the Eastern Pennsylvania region and another an engineer from the Philadelphia/South Jersey region. One site listed was located in another zone entirely, and for another site no information was provided regarding its location. Finally, included in this list was the Medical Center at Princeton, a multi-vendor location discussed above. At this location, the secondary FSE assignment is from the Philadelphia/South Jersey region.¹² Of course, while this document sets forth standing assignments, there is no indication of how many service calls were made to these locations during any particular period of time, who actually was called on any particular occasion to work at any of these locations, or who, if anyone, else may have been assigned to work at these sites.¹³ In addition to the locations listed above, the record additionally demonstrates that Lehigh Valley Hospital, located in the Eastern Pennsylvania region has, as its primary engineer, a FSE assigned to the Philadelphia/South Jersey region.¹⁴

Georg Schmidt, a FSE assigned to the Philadelphia/South Jersey region testifying for Petitioner, stated that during the time he has been working for the Employer (he came over when the Employer acquired ADAC), no service engineer from outside the Philadelphia/South Jersey region was assigned to work with him. He further testified that at no time during this period did he leave the region to work elsewhere. He testified that he works in the nuclear medicine division, and generally worked alone. However,

was compiled from information stored in the BAAN database. Which contains information relating to former Marconi employees.

¹¹ As noted above, this is the alternative unit proposed by the Employer.

¹² It is necessary to rely almost entirely upon Kreidinger's testimony regarding the contents of this document. Other than those individuals identified on the record during his cross-examination (discussed above) and in conjunction with his testimony on this issue, the record fails to contain information regarding the names and work assignment locations of other named employees. Thus, it is not possible to conduct an independent evaluation of the records to see if any other examples of cross-utilization may be adduced.

¹³ At one point in the hearing, Kreidinger was specifically asked by the hearing officer whether there were documents which would ultimately reflect who had worked on a given assignment. Kreidinger confirmed that such information could be accessed through the Employer's databases.

there is a group of five engineers who are knowledgeable about the equipment he services who contact each other for help with problems. If further assistance is required, they communicate with a technical support service based in California. Schmidt also testified that the group of ADAC-trained nuclear medicine engineers who work within the Philadelphia area generally keep in contact with each other regarding their whereabouts on a daily basis, but that he does not typically communicate with employees assigned to other modalities. The record additionally establishes, however, that Brandywine Hospital, one of the accounts to which Schmidt is assigned, is located approximately 25 miles northwest of Philadelphia. Brandywine is not within the Philadelphia/South Jersey region, but is located geographically within the Employer's Eastern Pennsylvania region. When confronted with this fact, Schmidt testified that, according to his understanding, Brandywine is located within the region he serviced, and is considered part of that region due to the presence of ADAC equipment. The record further establishes that the current configuration of the Eastern Pennsylvania region was established in June 2003, and that the Philadelphia/South Jersey region formerly occupied a larger geographic territory. The record also reflects that Schmidt has received service calls from Grandview Hospital, located north of Philadelphia. He could not state what region that site was in. As of the time Schmidt received that call, Grandview was not his account and he told that to the dispatcher. Schmidt also received a service call from the John Hopkins Oncology Center, located in the Capital region. As of the time of the hearing the call was still open in his itinerary.

Kreidinger testified that during his 15 month tenure as Zone Vice-President for Service he held multi-region meetings between the Philadelphia/South Jersey and Eastern Pennsylvania regions on at least three occasions. These meetings took place in

¹⁴ This information was derived from another exhibit introduced into evidence; however, the record fails to establish which database it was compiled from.

the western suburbs of Philadelphia. He also conducted multi-regional meetings in other parts of the East Zone where individuals from different regions came together based upon geography and practical considerations. To arrange such meetings, Kreidinger would contact the RSM's, who would, in turn, inform employees. Training for all employees takes place overseas, in Audubon, Holland. Groups of from 12 to 15 service engineers from all over the United States, and other countries as well, take part in such training. Each region is provided with a training budget, and selections are made as to who is to receive training, largely based upon business considerations and the need to either train engineers on new equipment or cross-train on equipment they are not familiar with. It is not clear from the record, however, at what level these determinations are made.

POSITIONS OF THE PARTIES

In support of its argument for a zone-wide unit, the Employer contends that the Petitioner is attempting to carve out an arbitrary piece of its East Zone operations, based solely upon an administrative designation that is devoid of any of the traditional community of interest indicia for an appropriate unit under Board law. The Employer asserts that the record shows that the only common thread loosely shared by the employees sought by the petition is the administrator through which their paperwork is managed. In contrast, the Employer's operations, and in particular its labor/employment relations are centralized in the Zone Office. The Employer argues that the Zone Vice-President and human resources personnel are involved in all policy promulgation and the hiring, firing, discipline and evaluation of all service engineers. It is urged that employee interaction and working conditions have no regional distinction but depend, rather, upon the modality serviced and the company from which the service engineer was hired, and are ultimately dictated by zone management in Valhalla. Alternatively, the Employer argues that the evidence of substantial interchange among the

Philadelphia/South Jersey, Capital and Eastern Pennsylvania regions support a finding that these regions, along with those BMT's in the Mid-Atlantic Multi Vendor Region constitute an appropriate unit.

The Petitioner contends that the presumption of the appropriateness of single-facility units should apply to the facts of this case, and that the employees in the unit sought have the same supervision and terms and conditions of employment. The Petitioner contends that even though wages, benefits and disciplinary procedures are determined centrally, this does not defeat the presumption of an appropriate unit. In particular, the Petitioner argues that the employees in the petitioned-for unit have substantial interaction with each other, and that the record does not demonstrate any level of substantial interaction with employees from other regions. The Petitioner additionally raises a policy consideration, arguing that to create a bargaining unit extending over such a vast geographic area would undermine the Petitioner's ability to fully and properly represent its members, and subject it to challenges under the duty of fair representation doctrine. Finally, the Petitioner contends that the BMT's should be excluded as they are subject to separate supervision, and do not have substantial interaction with the FSE's, and that the site operation specialist should be excluded on the basis that he is a supervisor and/or manager.

DISCUSSION

The Applicable Legal Standards

Section 9(b) of the Act states that the "Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994). And, the Board generally tries to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees. *Bartlett Collins Co.*, 334 NLRB No. (2001).

As noted above, Petitioner urges that the Board should find its petitioned-for unit, which it argues is tantamount to a single-location unit, to be presumptively appropriate. In the instant case, the evidence establishes that the employees in the petitioned-for unit rarely report to a centralized location, except for meetings and training, which takes place in Holland. In *Trane, an Operating Unit of American Standard Companies*, 339 NLRB No. 106 (2003), the Board looked at the appropriateness of a bargaining unit comprised of HVAC technicians who, like the FSE's herein, were primarily dispatched from their homes and usually received their daily work orders at home over the phone or via facsimile. They often returned their completed work orders and time sheets to the central office via facsimile from their homes as well. The Board considered the various unit contentions of the parties therein under a single versus multi-location analysis. Based upon this precedent, I find it appropriate to do so in the instant case, as well.

Thus, with respect to unit determinations regarding employees in single/multi-location units, the Board has long held that a single location unit is presumptively appropriate for collective bargaining. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665,666 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome "by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit." *Id.*

To determine whether the single facility presumption has been rebutted, the Board examines a number of community of interest factors including (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions and working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. *J&L Plate, Inc.*, 310 NLRB at 429; *Trane*, 339 NLRB No. 106 (2003) slip op. at 3. And while the Board has never found it necessary to adduce “overwhelming evidence . . . illustrating the complete submersion of the interests of employees” at a single location, it is also the case that the party opposing the single-facility unit has a heavy burden of rebutting its presumptive appropriateness. *Trane*, supra, slip op. at 2 (citing *Petrie Stores Corp.*, 266 NLRB 75,76 (1983)).

Local Autonomy

In the instant case, the employees in the East Zone unit have substantially similar skills and duties. Moreover, the Employer has centralized control over personnel and labor relations policies, including accounting, record keeping, payroll, wages and benefits, and over such matters as formal discipline. Centralized control over personnel and labor relations alone, however, will not be sufficient to rebut the single-location presumption where the evidence also demonstrates significant local autonomy over labor relations. *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984); *New Britain Transportation Co.*, 330 NLRB 397 (1999).

As an initial matter, each region is considered a separate cost center, and the RSM is responsible for maintaining his or her budget. In the event a FSE works in another region, the costs of his or her labor and equipment are allocated to that region. Further, inter-regional assignments may not be made without the knowledge and assent of the respective RSM's. Moreover, it is clear from the record that the RSM's play an important role in performing labor relations functions. Thus, each region is assigned a

manager. There is no additional level of supervisory or managerial personnel between the individual RSM and the zone vice-president. The RSM's in each region make work assignments based upon customer need and employee skill. The record reflects that RSM's hold meetings among their engineers, and authorize overtime for employees. RSM's are responsible for recognizing the need for additional personnel consistent with maintaining customer service and for passing along hiring recommendations to the zone vice president. Although all hiring decisions must be approved at the zone level, RSM's conduct initial interviews and may be the only supervisory or managerial representative to interview a particular applicant, particularly if they are being hired at a lower grade. The record further establishes that RSM's write annual performance evaluations that are relied upon by the zone vice-president in awarding merit increases. Although Kreidinger testified that, on one occasion in 15 months as zone vice president, he caused the evaluation of one employee to be changed, this was based upon his personal knowledge of that employee's skills and job performance. It is not feasible that Kreidinger, or any other zone vice president, would have independent access to such information for each employee in a unit spread over hundreds of miles and comprised of approximately 250 employees. Thus, it is apparent that Kreidinger relied upon the recommendations made by the RSM's in determining the merit increases of the employees in the East Zone. Further, RSM's are directly responsible for ensuring that FSE's perform their job responsibilities and independently address minor disciplinary problems. They are also responsible for recommending and implementing the Employer's decisions involving formal discipline, including written warnings and performance improvement plans.

In *Trane*, supra, the Board found that the single facility presumption had been rebutted. In that instance, however, it was found significant that the second location which the Employer sought to include into the unit had no separate management or supervision. All supervisory functions for both locations were centralized and the

employees at both locations received their assignments from a common dispatcher. Thus, it was concluded that the second site had no local autonomy apart from the petitioned-for location. In this case, however, the circumstances are different. In this regard, the presence of separate supervision militates toward a finding that the petitioned-for region may, on its own, constitute a separate appropriate unit. For example, in *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988), the Board found the single facility presumption to be un rebutted, where a local terminal manager conducted initial screenings for new hires and was consulted on major disciplinary issues. In *Esco Corp.*, 298 NLRB 837, 838 (1990), the Board found sufficient, albeit limited, local autonomy even where no statutory supervisor was assigned to the excluded location but the employer relied upon a lead man to oversee operations at the excluded facility. See also *AVI Foodsystems, Inc.* 328 NLRB 426 (1999) (local autonomy found where there was separate immediate supervision and day-to-day control over operations); and *Cargil, Inc.* 336 NLRB No. 188 (2001) (finding local autonomy based on separate supervisory staff).

Employee Interchange

Although the record does establish that, at times, employees are assigned to locations that are outside their regions, the record as a whole fails to establish meaningful, substantial or significant interchange. Initially, with respect to zone wide unit proposed by the Employer, there is no evidence of employee interchange over such a broad geographic area. The evidence proffered by the Employer related primarily to instances of interchange between the Philadelphia/South Jersey and East Pennsylvania regions and, to a far more limited extent the Capital region, presumably in support of its alternate unit position. Nonetheless, I find that this evidence falls short of meeting the Employer's burden in this regard. Thus, the Employer presented largely general, anecdotal evidence relating to employee interchange. However, such evidence lacked

context or specificity. The actual amount of time FSE's may spend working in conjunction with other employees was not developed in the record. Thus it cannot be determined whether, even if assigned to work in other regions, the FSE's have significant contact with their cohorts assigned to those regions.

Similarly, the records placed into evidence by the Employer fail to establish meaningful interchange. As noted above, these records merely refer to standing assignments, not to actual work done by employees over any particular period of time. Additionally, there is no way to know if employees work singly or together with others when completing these assignments. Moreover, the actual percentage of instances of "cross-utilization" of employees developed in the record is minimal as compared with the number of equipment sites (approximately 25 locations out of more than 720 entries) and fails to support the Employer's contentions that such assignments are made on a frequent, or regular basis. Although the Employer argues in its brief that these are mere, and by no means exclusive, examples, it failed to adduce evidence at hearing, such as the names of employees assigned to the East Pennsylvania and Capital regions, which would allow a more comprehensive analysis of these records. Further, it failed to present such an analysis either at the hearing or in its brief. Moreover, inasmuch as the records primarily relied upon by the Employer were compiled solely from one of three databases which provide information about employee assignments, it cannot be determined whether the locations listed represent a substantial percentage of its equipment sites in the three regions, or whether there are others, not listed, where primary and secondary work assignments are kept within a region. Inasmuch as the Employer bears the burden of adducing this evidence, it must be found to have failed to do so, especially since it appears from the record that it would be possible to access from the Employer's databases information that would demonstrate actual, not merely hypothetical, work assignments of employees. In *New Britain Transportation Co.*, 330 NLRB 397 (1999),

the Board found that the employer failed to meet its burden where it produced interchange data without providing a context as to the total number of routes and the percentage of employees involved in the temporary interchange. In that instance, the Board found that 200 bona fide instances of temporary employee interchange were not sufficient to meet the employer's burden, given the absence of evidence that a significant portion of the employer's work force was involved and that it was actually supervised by the local branch. Similarly, in the instant case, where there is scant direct evidence of actual interchange, there is no clear way to ascertain what portion of the Employer's work force is involved in "cross-utilization". Nor does the record demonstrate that these employees are subject to supervision by anyone but the RSM of the region to which they are assigned. Moreover, the evidence of three permanent employee transfers in the record (two from outside the East Zone) similarly fails to establish meaningful employee interchange.

Bargaining History

The parties' have bargained in a sub-group of regions within the East Zone. The petitioned-for unit is contiguous with one of these regions. In addition, the record demonstrates that the Employer has sought to, and has, excluded the BMT's from this bargaining unit. I note that there is no evidence that any other labor organization is seeking to represent employees in a unit other than that sought by the Petitioner.

Status of the BMT's and the Site Operation Specialist

BMT's and FSE's have similar qualifications and skills. It is also apparent, however, that the BMT's have separate immediate supervision and, unlike the FSE's, are administratively organized across several regions. It appears that they are compensated at a lower rate and, as they are assigned to one specific site, they do not spend a significant amount of time in travel status, unlike the FSE's. Moreover, there is no specific evidence regarding the amount of actual interchange experienced by the

employees in these two classifications. While it is certainly conceivable that a unit of BMT's and FSE's might well constitute an appropriate unit, given an appropriate geographic scope, I find that due to the clearly separate immediate supervision as well as differing terms and conditions of employment, they do not necessarily warrant inclusion in the unit. In this regard I note, as discussed above, that the Employer has, in the past, sought to exclude this classification from coverage under its contract with the Petitioner, and the Petitioner does not now seek to include them.

As for the site operations specialist, I agree with the Employer that there has been insufficient evidence adduced in the record to establish that this is a supervisory or managerial position. Rather, the site operations specialist functions largely like a lead person with respect to the BMT's. However, inasmuch as they are more closely aligned with this classification, and subject to the same supervision, I find it appropriate to exclude the site operations specialist from the unit, as well.

CONCLUSION

Based upon a consideration of the above-noted factors, and the record as a whole, I cannot conclude that the single facility presumption has been rebutted in this case. I find, therefore, that the Petitioner's requested unit is an appropriate one. In reaching this conclusion, I note that the test is whether the petitioned-for unit is an appropriate one, not whether either of the Employer's proposed units are appropriate or even "more" appropriate. While the regions within the East Zone are subject to central control in many respects, each individual region has separate supervision and functions autonomously in matters such as work assignments, budgeting, and in significant regard as to employee hiring and discipline. In particular I note that, other than the zone manager, who oversees 12 regions and approximately 250 employees, there is no other layer of common supervision or management. Thus, I do not find that the regions are so

functionally integrated as to have been effectively merged into one overall zone-wide unit, one which, as noted above, covers hundreds of miles, from Maine to Virginia.

Also significant is the lack of relevant, affirmative evidence of meaningful employee interchange or interaction. Such a factor can be of significance in determining whether a single facility presumption is overcome, and in the instant case the record is insufficient to establish that such employee interchange or interaction occurs in any substantial degree. Further, I find that the evidence which has been adduced in this regard is of limited value due to the fact that it was presented without meaningful context or other parameters.

Even assuming that due to the nature of the Employer's operation, it cannot be concluded that analysis of this unit issue would necessarily include the single facility presumption, I would still conclude that the petitioned-for unit is an appropriate unit. While all employees do not report to any specific facility, the Employer clearly maintains regions where groups of employees work which are defined by geographical boundaries and that operate as clearly identifiable units. Each geographical unit has an RSM who provides a significant degree of local supervision, such as assigning work and budgeting resources for the geographical region. The Board has long held that units that encompass clearly defined geographical areas may be sufficiently inclusive and compact to make collective bargaining in a single unit feasible, absent evidence of any substantial interchange with employees or offices outside the stated area. See *Metropolitan Life Insurance Co.*, 156 NLRB 1408, 1418 (1966). Here there is no evidence of any substantial interchange sufficient to warrant a finding that the petitioned for unit is not an appropriate unit. I conclude, therefore, that a unit confined to the field service employees in the Employer's Philadelphia/South Jersey region is appropriate, and shall direct an election in that unit.

Based upon the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: All full time and regular part-time field service engineers employed by the Employer in its Philadelphia/South Jersey region.

EXCLUDED: all other employees, and guards, professional employees and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time¹⁵ and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁶ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement

¹⁵ Pursuant to Section 102.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

¹⁶ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹⁷ Those eligible shall vote on whether or not they desire to be represented for collective bargaining purposes by Local 3, International Brotherhood of Electrical Workers, AFL-CIO.¹⁸

Dated at New York, New York,
October 31, 2003

(s) Celeste J. Mattina
Celeste J. Mattina,
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 420-4000
420-5027
420-4025
440-3300

¹⁷ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **November 7, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

¹⁸ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth St., NW, Washington, DC 20570-0001. This request must be received by the Board by **November 14, 2003**.